

1 case administrative courts, either in Texas or in
2 federal cases throughout the country.

3 Q. Okay. At the -- at the State's request, did
4 you examine a computer hard drive in this case?

5 A. Yes, I did.

6 Q. It will tell the Judge, if you would, just
7 briefly what you do when you examine these hard drives?

8 A. The -- the basic principle is to perform the
9 forensic examination, which is to perform analysis on a
10 forensic copy of the original evidence. So in other
11 words, I don't actually look at the original computer;
12 but I look at a forensic copy of that computer.

13 And the analysis, obviously, can vary from
14 the -- the request for the type of work that's involved;
15 but in this specific case I was -- reviewed evidence of
16 access to the computer, specifically to the computer and
17 information related to access dates and times and the
18 types of files that would have been accessed during a
19 particular time period.

20 Q. Now, were you made aware of certain facts in
21 this case with respect to what Dawn Killien said she did
22 on the computer?

23 A. Yes, I was.

24 Q. And during the course of your examination, did
25 you recover chat that was -- chat thread that Dawn

1 Killien started?

2 A. That's correct, I did.

3 Q. And have you reviewed her statements on that?

4 A. I -- the --

5 Q. Did you read through what she said she did,
6 the transcription?

7 A. The transcript of what I recovered, yes.

8 Q. Yes, sir.

9 A. Yes, I did review that and read that.

10 Q. So was -- was the purpose of your examination
11 partly to determine whether what you found on the
12 computer was consistent with what she said she did?

13 A. Yes, that's correct.

14 Q. Okay. Well, let me ask you a few questions
15 about that first of all. The date that we're talking is
16 May 8th, actually May 7th and May 8th is when she stayed
17 the night. From your examination did you determine when
18 the first time that Dawn Killien accessed the computer,
19 approximately?

20 A. Yes. That was -- approximate time, yes, I was
21 able to determine approximately 6:00 p.m. on May 8th,
22 she accessed the computer.

23 Q. When you examined the computer, were you able
24 to determine or make any kind of conclusion about
25 whether the computer was on or off when Dawn Killien

1 accessed it?

2 A. It was in -- it was consistent with it being
3 in a sleep mode. In other words, the computer was not
4 turned off. It was on, but in a -- a mode to reserve
5 power and -- and the act of moving a mouse or pushing a
6 key would wake the computer up effectively.

7 Q. So is -- is what you found on Greg Baird's
8 computer consistent with it being woke up with a
9 movement of a mouse?

10 A. Yes, it is.

11 Q. Did you see or were you able to determine when
12 the last time that computer was accessed before that?

13 A. Yes, I was.

14 Q. And when was that?

15 A. That was May 7th, I believe, at 5- --
16 5:21 p.m.

17 Q. Okay. So that would have been the day before?

18 A. That's correct.

19 Q. And was there anything that indicated to you
20 or that showed you that the computer was on before Dawn
21 Killien accessed it on Friday May 8th?

22 A. Between the time that the computer was last
23 accessed at 5:21 and -- and 6:00 p.m. on May 8th, the
24 next day, there was an activity that's consistent with
25 Windows system updates. Basically, the -- the computer

1 is being updated automatically by windows and that's
2 fairly common and that occurred later in the evening. I
3 don't specifically recall the time, but it occurred
4 later in the evening of May 7th.

5 Q. If a computer is in sleep mode, is it still
6 capable of searching for updates on the internet and
7 downloading those?

8 A. Well, if it's in sleep mode, no. So it would
9 have gone to sleep at some point after that point, yes.

10 Q. Now, I -- I just want to get a couple of
11 basics out of the way about recent -- My Recent
12 Documents files and recycle bins and that sort of thing.
13 First of all, where is My Recent Folders -- My Recent
14 Documents file located?

15 A. The folder is physically located in -- on the
16 hard drive in a place called "Recent." That's the name
17 of the folder, and there are a number of files that are
18 stored in that folder that are created -- they're what's
19 called shortcuts. They are effectively files used to
20 reference Recent Documents.

21 The way that it's viewed, however, is
22 different that someone doesn't actually access that
23 folder directly. That's simply viewed by going to the
24 start button on the Windows menu, and one of the many
25 options that pops you up is the Recent Documents. And a

1 list is populated that the user sees, and that list is
2 generated from the Recent Folder.

3 Q. Okay. So if I -- if I, as I do from time to
4 time, take work home with me on a flash drive and I put
5 it into my computer at home and I access a document
6 there from that flash drive?

7 A. Yes.

8 Q. Will that pop up on my Recent Documents?

9 A. It -- it would populate that folder; and at
10 some point after that, that's right.

11 Q. Okay. And you indicated that -- that it was
12 in the start menu. Can you just explain -- first of
13 all, we are talking about Windows?

14 A. The Windows operating system.

15 Q. Is there a start button at the bottom left
16 hand corner?

17 A. There is.

18 Q. And if you click that one time, will you see
19 among other files my Recent Documents?

20 A. Yes.

21 Q. So do you have to go very deep into the
22 computer at all or access any files, go to My Computer,
23 or do any of that stuff in order to find that My Recent
24 Document -- My Recent Document file or folder?

25 A. No.

1 Q. In your examination of a computer with respect
2 to what Dawn Killien did, is it your opinion that what
3 we're talking about is a -- was it a superficial --

4 MR. JAMES: I'm sorry.

5 Q. (By Mr. Phelps) Was it a superficial access
6 to the computer or was there deep access like look into
7 files and things like that? Do you understand what I'm
8 asking?

9 A. Not exactly. I'm sorry, no.

10 Q. I guess what I'm trying to figure out is:
11 With respect to Dawn Killien's access, when we're
12 talking about My Recent Documents file and trash bins,
13 is that something difficult at all for somebody to do?

14 A. No, it's fairly straight forward.

15 Q. Okay. Do those -- the recycle bin, is that an
16 icon on the desktop?

17 A. It's represented by an icon on the desktop.

18 Q. Okay. If you hit that start button, will you
19 also see the recycle bin?

20 A. You can, yes.

21 Q. Okay. With respect to Dawn Killien's access,
22 you said the first access, you said the first access was
23 about 6:00 o'clock on Friday, May 8th. Did you see any
24 indication that Dawn Killien or somebody at about that
25 time put a CD in the computer?

1 A. The -- What I located at 6:00 o'clock was
2 access to a system file that was being used, being
3 called, that was -- it's necessary for the media center
4 for music or other media that's been inserted into the
5 CD. So that's consistent -- the access of that is
6 consistent to a CD being put into a computer and being
7 accessed.

8 Q. So if you put a -- a music CD in there to
9 listen to it or anything else with it, would that show
10 up that way?

11 A. Yes.

12 Q. And is that what you found?

13 A. That is what I found, yes, sir.

14 Q. Is that consistent with what your
15 understanding of what Dawn Killien said?

16 A. Yes, it is.

17 Q. Now, did you find evidence that Dawn Killien
18 accessed the My Recent Documents folder or file?

19 A. I found evidence that she accessed a specific
20 file in the Recent Documents folder.

21 Q. And in your examination did you find in that
22 Recent Documents folder, a file with the name, something
23 to the effect of "boy sucks older men" or "older men
24 sucks boy," or something to that effect?

25 A. Something, a name to that effect, yes.

1 Q. And would that have been obvious or visible to
2 somebody that had opened up that Recent Documents file?

3 A. Yes.

4 Q. Okay. Again, that would have been with just
5 one click of the start menu and then to my Recent
6 Documents?

7 A. Correct.

8 Q. Okay. Do you -- did you in your examination
9 find evidence that she accessed the recycle bin?

10 A. Yes, I did.

11 Q. Now, if you would, explain to the Judge
12 exactly what a recycle bin is?

13 A. Okay. A recycle bin is a term that's, and
14 specifically in this case, deals with a Windows
15 operating system. The act of deleting a file is a user
16 initiated act. And when I, as a user, chooses to delete
17 a file, Windows allows me the ability to store it in a
18 temporary place called a recycle bin.

19 The reason for that is in case I need to
20 recover that file for whatever reason, I can. So it
21 acts as temporary storage facility. The only way that
22 files are emptied out of the recycle bin is if I need
23 the recycle bin to be emptied by, again, user
24 interaction. So all of that requires user interaction.

25 The recycle bin, also, acts as -- again,

1 it's -- it's a way to recover files that may have been
2 inadvertently deleted by the user; but it's, also,
3 representative of files not only on the computer but,
4 also, additional hard drives or other drives, external
5 drives, that may be attached to the computer.

6 So, in -- in other words, if -- if I have
7 a computer plugged in an external drive, a recycle bin
8 -- the recycle bin will not only show me which files I
9 delete off of my hard drive on the computer but anything
10 that I delete off of the external drive as well with the
11 same -- And if I didn't mean to delete that, then I can
12 restore that back to the external drive that I
13 originally deleted it from.

14 Q. So if I want to delete something, I would
15 delete it and I would have to go into -- actually delete
16 it from the computer and go into the recycle bin and
17 delete it from there?

18 A. That's correct, or empty the recycle bin is
19 the term that is used.

20 Q. Okay. And on Mr. Baird's computer, as it was
21 on that particular night May 8th, did you discover that
22 there were thumbnails of child pornography on that -- in
23 that recycle bin?

24 A. Yes, there is indication that there was a
25 thumbnail that was representative of files on the

1 recycle bin.

2 MR. PHELPS: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 MR. PHELPS: Those four images, your
5 Honor.

6 Q. (By Mr. Phelps) Let me show you State's
7 Exhibits 2, 3, 4, and 5. Did you recover these from
8 that recycle bin?

9 A. Yes.

10 Q. Okay. And were those from the computer hard
11 drive or from the external hard drive?

12 A. They were from the -- the external hard drive
13 that was attached to the computer.

14 Q. Okay. And have you reviewed what Dawn Killien
15 told the police about those four pictures?

16 A. I only reviewed her statement that was in the
17 police report.

18 Q. Okay. Do you -- do you recall whether her
19 description of those four documents was consistent --

20 A. Yes.

21 Q. -- with -- with what we discovered on the file
22 of the external drive?

23 A. Yes, they are consistent with her statement.

24 Q. During your examination did you discover
25 whether there were any attempts at protecting any of

1 this information?

2 A. There was no incryption or any passwords that
3 were either through Windows or otherwise that I was able
4 to locate that limited access to them, any of the files.

5 Q. Is it possible in that operating system if --
6 to require that when a computer goes to sleep, that when
7 it comes back there up, there would be a password to go
8 any further?

9 A. Yes.

10 Q. And was that done in this case?

11 A. No.

12 Q. Is it possible with respect to any particular
13 file, to password protect a file?

14 A. Generally speaking, yes.

15 Q. And -- and did you see any of that with
16 respect to these images?

17 A. No.

18 Q. Or anything on the Recent Documents file?

19 A. No.

20 Q. By the way, did you also -- Ms. Killien made
21 reference to clicking on a video to determine whether it
22 was, in fact, child pornography from the recent
23 documents file? Did you observe any evidence of that?

24 A. Yes, I did.

25 Q. Can you tell the Judge what you observed?

1 A. I observed two pieces. The -- the first piece
2 of evidence was on the computer itself. It was a
3 shortcut in the Recent Documents folder, which acts --
4 I'm sorry -- pointed to the video. Again, it was
5 something to the effect of "man sucks boy" or "boy sucks
6 man." I don't recall specifically.

7 That was on the computer, and then it was
8 accessing the video that was actually on an external
9 drive that was attached to the computer. And then I was
10 able to locate the video on the external drive and
11 review that as well.

12 MR. PHELPS: Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 Q. (By Mr. Phelps) Looking at -- is this a
15 document that you generated regarding that particular
16 access to that video?

17 A. Yes, it is.

18 Q. Okay. And does it indicate the time that it
19 was accessed, or do you recall based on that?

20 A. It was accessed on February (sic) 8th, 2009 at
21 9:15 p.m.

22 Q. And in the chat that we have offered into
23 evidence, is there a -- kind of a commensurate entry
24 from her indicating she's now looked that video?

25 A. Yes.

1 MR. JAMES: Judge, just for -- I think he
2 said February. Just so the record --

3 MR. PHELPS: May 8th is the date.

4 MR. JAMES: May 8th, yeah. Did you
5 intend to say -- did you intend to say May 8th?

6 THE WITNESS: Yes, I did.

7 Q. (By Mr. Phelps) In this State's Pretrial
8 Exhibit No. 6, is that -- that video clip put onto this
9 CD?

10 A. Yes, it is.

11 Q. Was that recovered by you from Mr. Baird's
12 computer?

13 A. Yes, from the external hard drive.

14 Q. From the external hard drive.

15 MR. PHELPS: Your Honor, at this time we
16 offer State's Exhibit No. -- Pretrial No. 6.

17 (Discussion held off the record.)

18 MR. JAMES: We don't have any --

19 THE COURT: That's 6?

20 MR PHELPS: Yes, sir.

21 THE COURT: State's 6 is admitted.

22 (State's Exhibit No. 6 admitted
23 into the record.)

24 Q. (By Mr. Phelps) And have you taken a look at
25 that video?

1 A. Yes, I did.

2 Q. What's the name of that video?

3 A. I'm sorry. I don't recall again. It's called
4 "Boy Scout David," comma, "Part 2-3."

5 Q. And have you looked at the video?

6 A. Yes.

7 Q. Is it child pornography?

8 A. Yes.

9 Q. You've seen child pornography before --

10 A. Yes, I have.

11 Q. -- in your previous experience?

12 A. Yes.

13 Q. Was the access to the Recent Documents folder,
14 the recycle bin, and the video that we just talked
15 about, did that occur on May 8th of 2009?

16 A. Yes, it did.

17 Q. Other than that access to the computer, did
18 Dawn Killien from your examination do anything else with
19 the computer of any significance?

20 A. Her activity was limited to accessing the web
21 and specifically accessing the forum where she was
22 posting and reviewing that information. My examination,
23 that was the significant portion of her activity, was
24 internet access.

25 Q. After she accessed that video at about 9:15,

1 do you see any further activity on her part in which she
2 is examining files of the Defendant?

3 A. No.

4 Q. Other than the access to the Recent Document
5 folder, the recycle bin, and that video, do you see her
6 examining any other folders?

7 A. No.

8 MR. PHELPS: Thank you. We pass the
9 witness.

10 MR. JAMES: Can we have one moment, your
11 Honor?

12 THE COURT: Yes.

13 (Brief pause in the proceedings.)

14 CROSS-EXAMINATION

15 BY MR. JAMES:

16 Q. Mr. Odom, let me ask a couple of questions
17 here. Was that -- You don't know what happened as far
18 as whether Greg told her to keep the bedroom door closed
19 or not, do you?

20 A. No, sir, I do not.

21 Q. You don't know whether or not he told her she
22 could use the computer, do you?

23 A. No, sir.

24 Q. You don't know whether or not she used that
25 computer without his permission, do you?

1 A. No, sir.

2 Q. Okay. So those are all the things that you --
3 you don't know. Let's talk about the things that you
4 were able to discern. Okay?

5 A. Okay.

6 Q. Were you able to find any evidence that songs
7 had been moved from the CD onto the computer?

8 A. Specifically, no.

9 Q. Now, you heard -- you heard Ms. Killien say
10 that she dragged songs on -- from the CD onto the
11 computer. You never found any evidence of that, did
12 you?

13 A. I didn't see the songs on there, no, sir.

14 Q. And you didn't see that they had ever been
15 deleted, did you?

16 A. No, sir.

17 Q. And if they had been dragged on there, there
18 would be a fingerprint -- a footprint or if they had
19 been deleted there would have been a footprint, wouldn't
20 there?

21 A. If they were deleted on that computer, that's
22 correct.

23 Q. And you didn't see that, did you?

24 A. Not on that computer.

25 Q. And, in fact, at 9- -- Did you make a timeline

1 or something? Do you have any notes that you made about
2 your -- your findings?

3 A. I have just some printouts that were part of
4 my examination that are related.

5 MR. JAMES: May I?

6 THE COURT: Yes, sir.

7 Q. (By Mr. James) The problem is, Mr. Odom, I
8 don't always know what I'm looking at.

9 MR. JAMES: Your Honor, could I have
10 Ms. Hubbard, who is my expert, look at these, because
11 this is essentially Greek to me. And this also -- these
12 are --

13 Q. (By Mr. James) What are these, sir?

14 A. That is a listing of the files in the recycle
15 bin from the external hard drive.

16 MR. JAMES: May I have her -- I can
17 continue my cross of him, Judge.

18 THE COURT: Okay.

19 Q. (By Mr. James) Now, you said at -- at 6:00
20 p.m. it was action consistent with somebody listening to
21 music, right?

22 A. That's correct, yes.

23 Q. And then it's three hours -- The computer goes
24 back to sleep, doesn't it?

25 A. I don't believe it did. It's possible it

1 could have, but I --

2 Q. Well, at -- the next thing that happens after
3 somebody is listening to music, you don't see any
4 evidence of anything being dragged onto the computer,
5 you don't see anything else until 9:15; is that right?

6 A. That sounds about right. I'm not sure of the
7 specific times, but --

8 Q. And then at that time somebody accesses the
9 Recent Folder, correct?

10 A. Well, there is access to a file on the Recent
11 Folder.

12 Q. Well -- but they get to it through going to
13 the recent -- Recent Folder, right?

14 A. That's correct.

15 Q. And you don't see any sign that anybody is
16 deleting music or trying to add music or anything else
17 on the computer, but we go straight to Recent Folders
18 and it's got a -- a list with names on it, right?

19 A. Yes, sir.

20 Q. And then somebody clicks "Boy Scout David,
21 Part 2-3;" is that right?

22 A. That's the name of the file, yes.

23 Q. Okay. And somebody plays that and the video
24 comes on. So we're getting that played, right?

25 A. Yes.

1 Q. And then somebody later clicks on the
2 deletion. And before those pop up -- those thumbnails
3 come up -- they don't just come up when you pop on them
4 or when you click on that. What you get is a -- a
5 wording, a description, and you click on that
6 description; and that's what gives you the thumbnails,
7 right?

8 A. I would not say that's an accurate
9 characterization of how that works. In fact, with
10 Windows and certainly with Windows Vista, it has the
11 ability to store thumbnails to allow for any folder
12 containing any sort of photograph to have a thumbnail
13 version of that photograph for the purposes of seeing
14 that.

15 Q. Well, what is the case in this -- on this
16 instance on this computer?

17 A. Well, by my accounts there's thumbnail
18 versions of that.

19 Q. Okay. But did you have to click on something
20 to get those thumbnails?

21 A. You would have to access the folder in which
22 the thumbnails reside in -- in which the pictures reside
23 in. Sorry.

24 Q. Okay. Just for demonstrative purposes, you
25 click on the recycle bin, right?

1 A. Okay.

2 Q. And what the recycle bin is going to give is
3 descriptions of files. It may be holiday vacation, or
4 it may be anything. It may be something horribly
5 suggestive, but it's going to give you those words. And
6 then you click on this (Indicating); and then up will
7 pop what's there, correct?

8 A. I'm not sure I follow your question. Are you
9 saying that "holiday vacation" is a folder that has
10 pictures within that folder?

11 Q. Yes, sir. Yes, sir.

12 A. Certainly, that's one way that they could be
13 viewed. In some instance the thumbnail will actually
14 put thumbnails of the photos on a folder -- on this
15 folder so that you would see the thumbnails from the
16 folder view as well.

17 Q. But that's not what the situation is here, is
18 it? In here we've got words, some word that was
19 suggestive, "Boy sucks man" or whatever it was. That
20 was clicked on, because there has been testimony. It
21 said this "boy sucks man" or whatever and then you click
22 on that and that's when you get the -- the thumbnails,
23 correct?

24 A. No, sir, that's not my testimony actually.
25 The -- the video in question that we're discussing is

1 actually an active file stored on the external hard
2 drive. That's not the name of any of the files and
3 certainly not the name of files that were here. In
4 fact, the name of the files here are not suggestive at
5 all. They're simply numerical. So it would not be a
6 suggestive name at all. It's only a number that would
7 show up.

8 And, again, to answer question, I mean,
9 that -- those are two different places, that's two
10 different files. The pictures that are being -- that
11 are viewed that were representative of the pictures of
12 the thumbnail, are simply that they're pictures that
13 would be represented in a smaller version so that a user
14 would be able to see those in what's known as a
15 thumbnail size version.

16 And those files were in the recycle bin.
17 That's separate from the video that's stored in an
18 active file on the -- on the hard drive -- or the
19 external drive. Sorry.

20 Q. There is no doubt that somebody -- it appears
21 nobody other than Ms. Killien went in and accessed both
22 the recent files to see what had been put on there
23 recently as well as the recycle bin. That's true, isn't
24 it?

25 A. She accessed one file in the recent files.

1 Q. Yes.

2 A. One specifically.

3 Q. And, also, accessed the recycle bin, correct?

4 A. Yes.

5 MR. JAMES: I'll pass the witness.

6 REDIRECT EXAMINATION

7 BY MR. PHELPS:

8 Q. When you opened up that recycle bin on the
9 external drive, would you see thumbnails?

10 A. Yes, sir.

11 Q. And is that what happened in this case?

12 A. Yes.

13 Q. So Ms. Killien didn't have to see a folder and
14 then click on that to make another step to go in and
15 find those thumbnails, did she?

16 A. There is no indication of that.

17 MR. PHELPS: Okay. That's all I have,
18 Judge.

19 MR. JAMES: Nothing further.

20 THE COURT: You can step down, sir.

21

22 MR. PHELPS: Your Honor that's all I
23 have.

24 MR. JAMES: Call Rose Hubbard, your
25 Honor.

1 ROSE HUBBARD,

2 Having been duly sworn, testified as follows.

3 DIRECT EXAMINATION

4 BY MR. JAMES:

5 Q. Would you state your name, please?

6 A. My name is Rose Marie Hubbard.

7 Q. How are you employed?

8 A. I am employed with Compton & Wendler, C.P.A.,
9 law firm, accounting firm.

10 Q. And what is your educational background?

11 A. I have an under-grad degree in Criminal
12 Justice and master and minor in Psychology.

13 Q. And what is your professional background --
14 excuse me -- what -- how were you previously employed?
15 Were you employed -- assigned to the F.B.I. as a task
16 force officer?

17 A. Yes, I was.

18 Q. Okay. What was your jobs there?

19 A. Computer forensic examiner.

20 Q. Okay. And do you have any idea how many
21 computer files that you examined while you worked there?

22 A. Computer files? Millions.

23 Q. Okay. And have you previously been qualified
24 as an expert witness in the State of Texas?

25 A. Yes, I have.

1 Q. And I'm sorry. How long did you work as a
2 forensic examiner with the F.B.I. examining computers?

3 A. Five years.

4 Q. And you currently work in conjunction with
5 Paul Price, who used to be with College Station Police
6 Department?

7 A. That's correct.

8 Q. What kind of training and certifications do
9 you have?

10 A. I was trained and certified by the F.B.I. as a
11 computer forensic examiner. I'm also certified with the
12 -- as a C.F.C.E. with the International Association of
13 Computer Investigative Specialists, also known as IACIS.

14 Q. And let me ask you, ma'am: When a computer is
15 being utilized, does it leave a footprint or evidence of
16 what has been accessed or opened?

17 A. Yes, it does.

18 Q. And were you able to examine the computer that
19 was seized from Greg Baird's home at the district
20 attorney's office here?

21 A. Yes, I did.

22 Q. Were you able to determine the history of
23 where that computer had been directed to go?

24 A. Yes, I did.

25 Q. Can you tell us, please, prior to May the 8th

1 was the -- was the computer used on May the 7th?

2 A. Yes, it was.

3 Q. And then was it used again until May -- or was
4 it used again May -- pardon me -- on May the 8th?

5 A. That's correct.

6 Q. Okay. You heard Mr. Odem talk about there was
7 no indication that any songs had been dragged onto the
8 computer. Did you find any indication that any songs or
9 -- or music had been dragged from a CD onto that
10 computer?

11 A. No, I did not.

12 Q. As soon as the computer was awakend -- okay?

13 A. Yes.

14 Q. -- about what time did you find it to be
15 awakend?

16 A. The computer woke up at approximately
17 9:06 p.m.

18 Q. And if I didn't ask you this, if music had
19 been dragged onto the computer, there would be a
20 footprint of that, wouldn't there?

21 A. There would be some type of footprint, yes.

22 Q. You didn't see that, did you?

23 A. No, I didn't.

24 Q. 9:06 the computer was awakend, and where was
25 the first place that the computer was directed to go?

1 A. To the Recent Links' folder or what has been
2 commonly referred to as -- this afternoon as recent
3 items.

4 THE REPORTER: I'm sorry. Could you
5 repeat?

6 THE WITNESS: Recent Links' folder or
7 Recent Items.

8 Q. (By Mr. James) And then was a -- and that
9 would be consistent with what Mr. Odem said, wouldn't
10 it?

11 A. Yes, it is.

12 Q. And then at that point did somebody play one
13 of the -- or click on one of the Recent Documents?

14 A. Yes.

15 Q. And was that Recent Document that was played
16 Boyscout David part 2 dash 3?

17 A. Yes, Boyscout David part 2 dash 3.

18 Q. Okay. And the video player automatically come
19 on at that point?

20 A. Yes, it did.

21 Q. And just so we're all clear, the Recent
22 Folders or Recent Documents is repository of the most
23 recently used items; is that correct?

24 A. That's correct.

25 Q. Was an iPhone ever connected to that computer

1 that night?

2 A. No, there was not.

3 MR. JAMES: Pass the witness.

4 CROSS-EXAMINATION

5 BY MR. PHELPS:

6 Q. Ms. Hubbard, my name is Shane Phelps. We've
7 actually met before?

8 A. Yes.

9 Q. You've come up to our office, I think, at
10 least five times to --

11 A. Four times, I believe. Yes, sir, I've been
12 there.

13 Q. My office has been real helpful to you and
14 given you access to everything you needed?

15 A. Yes, sir.

16 Q. My investigator, Nathan McCune, advised you
17 there were external drives that were -- that were also
18 available to you?

19 A. Yes, sir, he advised me of the media devices.

20 Q. Did you not know until today that there was an
21 external drive that was actually hooked up to that
22 computer the night that Dawn Killien used it?

23 A. No, sir, I've known it all along.

24 Q. Okay. Why didn't you ask to look at that
25 external drive?

1 A. Because my -- my primary task was to find out
2 how the computer was turned on. Once it was turned on,
3 what sequence of events occurred.

4 Q. Well, wouldn't that sequence of events involve
5 what files were accessed?

6 A. Yes, from the K Drive.

7 Q. Okay. And isn't it -- isn't it true that some
8 files that were accessed, were actually accessed from
9 the external drive that was hooked up to the computer
10 that night?

11 A. Files could have -- files were accessed from
12 the K Drive there that night.

13 Q. Okay. Did you know about that prior to today?

14 A. Yes, sir.

15 Q. Did you know that the recycle bin that that
16 Dawn Killain accessed through the icon on the desktop
17 was partly at least the recycle bin on the external
18 drive?

19 A. In the recycle bin there will appear links to
20 K Drive, which in this case is this external device that
21 you're talking about.

22 Q. Okay. But you didn't look through that
23 external device at all?

24 A. No, sir, I did not.

25 Q. So you've never examined the contents of that

1 recycled bin to determine whether Dawn Killien saw the
2 things she said she saw?

3 A. I can determine that she did see some of the
4 things that she saw, yes, I can, via the Recent Links --

5 Q. Without looking at the -- without looking at
6 the external drive?

7 A. I can -- I can look at the Recent Links and --
8 or the Recent Items or recent doc's folder, whatever
9 term you would like to use in this instance, and confirm
10 that she did see some files she described.

11 Q. Okay. Well, let me ask her (sic) just for a
12 moment about some of the things that I think we can
13 agree on. No. 1, you agree that -- that Dawn Killien
14 accessed the Recent Documents file; is that right?

15 A. Yes, sir.

16 Q. Do you know what time that was?

17 A. Yes, sir, I do. She asked -- accessed it at
18 9:15 p.m.

19 Q. Okay. 9:15 p.m. Have you read the chat that
20 she put on the computer?

21 A. Yes, sir, I have.

22 Q. That is consistent with her accessing the
23 Recent Documents to look at that particular video that
24 she referenced in the chat, is it not?

25 A. What she describes as far as what she -- I

1 want to make sure I understand.

2 Q. Okay. Well, you know that there's some chat
3 that she got onto about 8:42, right?

4 A. Yes.

5 Q. And posted what -- what happened, right?

6 A. Yes, sir.

7 Q. And at some point around 9:15 in that chat,
8 she indicated: I looked at a video, it's child porn.
9 Do you recall that?

10 A. Yes, sir, that is correct.

11 Q. And that was consistent at that time with what
12 you're saying was her access to the Recent Documents'
13 file?

14 A. That is correct.

15 Q. Okay. Is it your testimony that she did not
16 access the Recent Documents' file prior to that?

17 A. It is not my testimony that she did not access
18 it.

19 Q. So when was the last time she accessed the
20 Recent Documents' file?

21 A. The first time was when she woke up the
22 computer at 9:06 p.m. At 9:15 she went into the Recent
23 Items' list and clicked on the link to the Boyscout
24 David. That was the first time.

25 Q. Okay. Is it -- is it possible that she

1 accessed and woke up the computer earlier that evening?

2 A. Not according to the logs that I viewed.

3 Q. Okay. If she were to have put in the CD
4 earlier that evening, she would have had to wake up the
5 computer to do? Do you agree with that?

6 A. Yes, sir.

7 Q. Okay. And did you see evidence that she
8 actually put a CD in?

9 A. No, sir.

10 MR. PHELPS: May approach, your Honor?

11 THE COURT: Yes, sir.

12 Q. (By Mr. Phelps) Do you know what this is?
13 Are you familiar with this kind of a form?

14 A. Somewhat familiar, yes, sir.

15 Q. Okay. Does this form, obviously generated by
16 Mr. Odem, our computer forensic expert, indicate that at
17 6:06 that evening there was access, as he described in
18 his testimony?

19 A. Yes, sir, I see that.

20 Q. Okay. Does that not mean in your training and
21 experience that she actually put a CD in at 6:06 p.m.
22 when the computer should -- obviously had been to be
23 woken up to do that?

24 A. The -- the logs reflect that the computer was
25 put to sleep and did not -- at, I believe, it was

1 5:21 p.m. on the 7th and it did not wake up until
2 9:06 p.m. or, I believe, it was U.T.C.

3 Q. At least from -- from what you were able to
4 determine from your examination?

5 A. From -- from what I'm able to determine based
6 on my examination, the logs state -- the computer logs
7 state that the computer was in sleep mode until
8 9:06 p.m.

9 Q. So that I understand your testimony, your
10 testimony is that from 5:21 the day before until 9:06
11 p.m. the evening of May 8th, that a computer was asleep?

12 A. Yes, sir.

13 Q. And that it was not woken up until 9:06 p.m.?

14 A. That is correct.

15 Q. Is that consistent with that chat?

16 A. The chat?

17 Q. Have you read the chat?

18 A. Basically, I've gone through the chat; but I
19 haven't reviewed it.

20 Q. This is State's Pretrial No. 7. I mean, this
21 is 8:42 p.m. on Friday May 8th, 2009, right?

22 A. Yes, sir.

23 Q. And this is Sublime Serenity. You understand
24 that to be Dawn Killien?

25 A. That's right, yes, sir.

1 Q. And -- and she goes through almost three pages
2 explaining her access to that computer prior to this
3 time, right?

4 A. Yes, sir.

5 Q. So I don't understand how that reconciles with
6 your testimony that --

7 MR. JAMES: Judge --

8 MR. PHELPS: -- it not open up and it was
9 asleep from 5:21 the next day until 9:06, after she must
10 have put that on the computer. How did that happen?

11 MR. JAMES: Judge --

12 THE COURT: Yes, sir, you have an
13 objection?

14 MR. JAMES: I think I understand his
15 problem. May I see that, your Honor?

16 MR. PHELPS: Let me -- let me clear it
17 up.

18 MR. JAMES: Okay. Go ahead. Go ahead.
19 I have no objection.

20 Q. (By Mr. Phelps) At a minimum she was on this
21 computer at 8:42. Do you agree with that?

22 THE WITNESS: May I explain, your Honor?

23 THE COURT: Yes, ma'am.

24 Q. (By Mr. Phelps) Can you answer my question
25 first? Does that mean she was on the computer?

1 A. The computer at 8:42 p.m. Texas time --

2 Q. Okay.

3 A. -- no.

4 Q. Do you know where this is?

5 A. No.

6 Q. So how do you know what time it is?

7 A. All the -- all the logs that I refer to, I go
8 by the local machine time or the U.T.C. code.

9 Q. Okay.

10 A. What you see here is from a server. I cannot
11 testify to the time of the server. I can only testify
12 to the machine that I see.

13 Q. Okay. So in your -- your testimony is that --
14 that that we're looking at, that chat, has to have been
15 generated by Dawn Killien after 9:06 p.m. on May 8th?

16 A. I'm saying that the internet activity that's
17 right here according to his machine, started at
18 9:54 p.m.

19 Q. According to -- Okay. So are you saying that
20 this is off by about an hour?

21 A. Yes, sir.

22 Q. Okay. Do you agree with me that all of the
23 activity listed on that chat probably happened before
24 she got on the computer and --

25 A. No, sir. It -- it occurred after -- after she

1 got on the computer. See the timeline? It comes on at
2 9:06 p.m.

3 Q. Okay.

4 A. The recent docs' folder, Recent Links' folder,
5 that we've been discussing?

6 Q. Yes, ma'am.

7 A. Okay. Comes down at 9:15, there is the file
8 that Mr. Odem -- yes.

9 Q. Okay.

10 A. And then, of course, the player comes on,
11 because it's got to play the video.

12 Q. Right.

13 A. Okay. Nothing else is done until about 40
14 minutes later when you see the internet activity --

15 Q. Okay.

16 A. -- which is this.

17 Q. Do you show anywhere that she on your timeline
18 -- And let me ask this -- this quickly.

19 A. Sure.

20 Q. You've indicated that this is your timeline of
21 Dawn Killien's activity?

22 A. Yes, sir, on the computer.

23 Q. The computer, what the computer says she did?

24 A. Yes, sir.

25 Q. Where does it say she accessed the recycle bin

1 on the external hard drive?

2 A. It does not.

3 Q. Why wouldn't it say that?

4 A. Because, again, I was assigned with the task
5 as to, one, how did the computer come on --

6 Q. Okay.

7 A. -- two, what events happened after the
8 computer came on.

9 Q. Okay. Is it possible that this computer
10 was awakend at 9:06 but it was awakend earlier that
11 evening --

12 A. No, sir.

13 Q. -- the activity? It's just not possible?

14 A. Not according to the records that the computer
15 provides that I've reviewed.

16 Q. Sometimes in your experience do not find
17 things on computers that you expect to find?

18 A. I'm sure.

19 Q. Okay. Let me show you again what Mr. Odem
20 generated from that computer. I mean, this is -- this
21 is acceptable in your industry, is it not?

22 A. Yes, sir.

23 Q. You're familiar with this form?

24 A. Sure.

25 Q. Is there any question in your mind that this

1 form reflects that something happened that looks like a
2 CD being put in that computer at 6:06 p.m.?

3 A. What I can state is -- May I?

4 Q. Sure.

5 A. What I can state is this M.C.E. spotlight is
6 an AOL cap file --

7 Q. Okay.

8 A. -- which is used with the AOL. I do know
9 there were processes running on his P.C., just normal
10 processes that were running before the machine went to
11 sleep and processes that were running after he went to
12 sleep. But, again, the period of time that I was
13 assigned or tasked to do remains consist with the --

14 Q. What period of time were you told to do?

15 A. There was no -- from the time the computer
16 went to sleep, which is May the 7th, 5:21 p.m. --

17 Q. Okay.

18 A. -- until it woke up on May the 8th at
19 9:06 p.m. --

20 Q. Okay. Is --

21 A. -- no activity occurred.

22 Q. Okay. But isn't this reflective of activity
23 occurring earlier than that -- that evening?

24 A. I understand.

25 Q. "Yes" or "no"? Is this an indicator that

1 there was activity on that computer earlier in that
2 evening?

3 A. Yes, that is an indicator.

4 Q. Is it consistent with putting a CD in a
5 computer?

6 A. Not necessarily. That -- this is an AOL CAT
7 file.

8 Q. I understand. I understand that it may not
9 necessarily be that. What I'm asking you is: Is it
10 consistent with putting a CD in a --

11 A. If you were to put a CD into a computer, it
12 would wake up the power. If there was a power
13 interruption, it would have been noted -- would have
14 been noted in the event log on the computer. There was
15 no such notation on the computer's log.

16 Q. So your testimony is that this just happened
17 while the computer was asleep?

18 A. Possibly.

19 Q. Possibly?

20 A. Yes.

21 Q. Okay.

22 A. My concern, again, is with the normal user
23 activity during the period of time from May the 7th,
24 from time it went to sleep, until it was awakend on 5-8.

25 Q. Okay. And your testimony is from 5:21 the day

1 before until 9:06 p.m., that computer was asleep and
2 nobody could have used it? Is that your testimony?

3 A. I'm saying according to the logs, the computer
4 logs themselves, the records, that was the period of
5 time.

6 Q. Could you have just misread those logs?

7 A. According to the event logs, no --

8 Q. Was --

9 A. -- it was there, it was asleep, and then the
10 power came up with on.

11 Q. Were you aware of this until Mr. Odem
12 testified about it earlier today? Did you know this
13 happened? Did this pop up on your search?

14 A. This -- this particular -- I can't state with
15 this particular one, but the M.C.S.C. CAT files that I
16 just described did appear. I cannot tell you about that
17 particular one.

18 Q. Okay. So you can't say this was not, as
19 Mr. Odem testified, putting a CD into the -- into the
20 computer, waking up that program to -- to listen to
21 music?

22 A. That's correct.

23 Q. Okay. Now, as -- as Mr. James asked Mr. Odem,
24 I'll ask you the same questions. You don't have any
25 information, personal information, that Dawn Killien did

1 not have access to this computer, do you?

2 A. I'm sorry. I don't understand.

3 Q. You don't have any -- any information,
4 personal information, that Dawn Killien was told that
5 she couldn't get on the computer?

6 A. Oh, no, sir. No.

7 Q. You don't have any information or you can't
8 provide anything to this Court to suggest that there was
9 any type of password protection on this computer?

10 A. There was no password protection.

11 Q. Okay. And is there -- is there?

12 A. Time out.

13 Q. What?

14 A. Meaning when it goes into sleep mode and you
15 wake it up --

16 Q. Yes?

17 A. -- password does not appear.

18 Q. Okay. But that's possible on that computer,
19 is it not?

20 A. It's possible, yes.

21 Q. And it's also possible to safeguard these
22 particular files with a password, is it not?

23 A. Yes, it is.

24 Q. And that wasn't done?

25 A. No.

1 Q. Okay. And there is no question in your mind
2 that when Dawn Killien accessed this computer, all she
3 did was move the mouse or touch a key?

4 A. That is correct. To wake it up?

5 Q. Yes, ma'am.

6 A. All she did was move the mouse.

7 Q. And then the desktop shows up and she can go
8 anywhere she wants on that computer at that point,
9 right?

10 A. Yes.

11 Q. Or unless it's password protected or
12 incrypted, correct?

13 A. That's correct.

14 Q. And that's not the case in this situation?

15 A. That's not the case.

16 Q. You have no evidence that the -- that this
17 computer was locked away in a computer armoire or
18 somewhere that -- that somebody would have had to break
19 in or do anything like that?

20 A. As to it's physical location, I have no
21 knowledge.

22 Q. Okay. So you did find evidence that Dawn
23 Killien -- or do you -- accessed the recycle bin?

24 A. I don't have any evidence that she recycle --
25 accessed the recycle bin.

1 Q. You knew that that was one of the allegations,
2 right, or one of the things that she said she did?

3 A. Yes.

4 Q. And yet did you not make an attempt to
5 document that, or did you just not find it?

6 A. Well, my -- my -- my concern, again, was with
7 the first sequence of events.

8 Q. With wasn't -- wasn't your charge to determine
9 based upon what Dawn Killien said she did on the
10 computer to determine whether she, well, basically was
11 lying or that she did other things on the computer that
12 she did not say she did? Was that -- was that what you
13 were supposed to do?

14 A. My -- my job or task, again, was to see if she
15 -- if what she said was consistent with what I found in
16 the computer's records.

17 Q. Okay. And one of the critically important
18 things she said to the police and on that chat was that
19 she accessed the recycle bin, right?

20 A. Yes.

21 Q. And that's where she found those images of
22 child pornography, those thumbnails, right?

23 A. Yes.

24 Q. You don't have any evidence to dispute that
25 she did that?

1 A. I have no evidence to dispute that.

2 Q. But it is a significant thing that you were
3 looking for, right?

4 A. Well, no, basically if she -- if she accessed
5 the recycle bin, she accessed the recycle bin. The
6 question was --

7 Q. But if you were supposed to determine whether
8 Dawn Killien did what she said she did and there are
9 really only two or three things that are important with
10 respect to what she did when she woke up the computer,
11 when she accessed the recent documents folder, when she
12 accessed the recycle bin, because those are the things
13 that form the basis of the search warrant. Weren't
14 those significant enough in your mind that you looked
15 for them?

16 A. Yes, sir, I -- I did look.

17 Q. Did you find any evidence on your timeline
18 here that she accessed the recycle bin?

19 A. No, I did not.

20 Q. You know that she had to have accessd the
21 recycle bin, right?

22 A. According to her statement, she accessed the
23 recycle bin.

24 Q. Well, in her statement to the police she
25 rather decriptively described these were these were the

1 images she found on the recycle bin -- in the recycle
2 bin --

3 A. Yes.

4 Q. -- that Mr. Odom downloaded from that recycle
5 bin on that external drive. So in order to made that
6 description to police then, she had to have been in the
7 recycle bin, right?

8 A. Yes, it's very possible.

9 Q. On your timeline where it show that she was in
10 the recycle bin?

11 A. On my timeline it does not show that she was
12 or was not on the recycle bin. She could have gone into
13 the recycle bin and viewed those and not altered it.
14 However, she would have gone in and deleted two songs
15 from the recycle bin --

16 Q. But that's not the question I'm asking.

17 MR. JAMES: Objection. Side-bar.

18 THE COURT: Overruled.

19 Q. (By Mr. Phelps) Looking at what I've marked
20 as State's Pretrial Exhibit No. 8. That is your
21 timeline of -- of Dawn Killien's activity on the
22 computer; is that right?

23 A. Yes, sir.

24 MR. PHELPS: Your Honor, at this time I
25 offer State's Exhibit Pretrial No. 8.

1 MR. JAMES: No objection.

2 THE COURT: State's 8 is admitted.

3 (State's Exhibit No. 8 admitted
4 into the record.)

5 Q. (By Mr. Phelps) It doesn't say anything about
6 access to the recycle bin, does it?

7 A. No, sir.

8 Q. Okay. You -- you do indicate: 9:06 p.m., the
9 computer wakes up, accesses recent folder Boyscout David
10 part 2, etcetera. 9:15 Boys New -- that's that starting
11 up to play that, right; or it's --

12 A. That's -- that's the folder. The file is
13 within the folder.

14 Q. Okay. So all three -- both of those things
15 occur at 9:15. So she watches the video at 9:15, right?

16 A. Yes, sir.

17 Q. And then at 10:00 p.m., internet activity --
18 or 9:54 internet activity starts?

19 A. Yes.

20 Q. It stops at 10:00 p.m.

21 A. Uh-huh.

22 Q. Trimmed micro virus scans, what is that?

23 A. That is just a virus scan that he had on his
24 computer that goes in and looks for viruses.

25 Q. Does that -- does that do that while you're

1 actually on the computer?

2 A. Yes, sir.

3 Q. And then 10:45, 10:53, and 11:15 it's internet
4 activity starts, internet activity stops, internet
5 activity starts; and at 1:14 p.m. internet activity
6 stops and the computer goes to sleep?

7 A. Yes.

8 Q. Okay. And that is your timeline of the
9 significant events according to the event log in the
10 computer?

11 A. Yes, sir.

12 THE COURT: Let me interpret just a
13 minute. I've got a note here that says: By order of
14 Judge Simms the courthouse will close by 4:00 p.m.

15 MR. PHELPS: I'm almost done.

16 MR. JAMES: I'm not.

17 THE COURT: You're not?

18 MR. JAMES: I'm not. I don't know if we
19 want to get through with her. I've got some more but --

20 MR. PHELPS: We can shut down now,
21 because I'm sure people have to get our stuff together.

22 THE WITNESS: I have a long drive.

23 THE COURT: All right. Let's get through
24 with this witness, then.

25 Q. (By Mr. Phelps) Okay. So the bottom line is

1 that your timeline of significant stuff on her computer
2 based on what you're supposed to do, doesn't reflect
3 that she accessed the recycle bin?

4 A. Yes, sir.

5 Q. Okay. And -- and there is no question that
6 that's pretty important? Do you agree with that?

7 A. Recycle bin is important.

8 Q. Okay.

9 THE COURT: How much again --

10 MR. PHELPS: I've probably got 5 or 10
11 minutes top.

12 MR. JAMES: Probably 15 minutes, Judge,
13 10 or 15 minutes.

14 THE COURT: So we're going to need
15 another --

16 MR. PHELPS: 20 or 30 minutes?

17 THE COURT: Another 30 minutes to
18 complete the hearing?

19 MR. JAMES: Of this witness and then
20 we've got more.

21 THE COURT: How much more do you got?

22 MR. JAMES: I'm going to call Mr. Odem
23 back.

24 THE COURT: Just roughly. I won't hold
25 you to it.

1 MR. JAMES: 30 more minutes, 30 to 45
2 more minutes, Judge. I've got to put my client on.
3

4 (Discussion held off the record.)

5 THE COURT: All right, sir. We'll shut
6 it down now and come back at 2:30 Friday.

7 (End of proceedings for day.)
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1 THE STATE OF TEXAS)
2 BRAZOS COUNTY, TEXAS)

3 I, Susan R. Rainwater, Visiting Court Reporter
4 in and for the 272nd Judicial District Court of Brazos
5 County, State of Texas, do hereby certify that the above
6 and foregoing contains a true and correct transcription
7 of all requested excerpted portions of evidence and
8 other proceedings as requested to be included in this
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or
11 in chambers and were reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly reflects
14 the exhibits, if any, admitted by the respective
15 parties.

16 I further certify that the total cost for
17 the preparation of this expedited copy of the Reporter's
18 Record is \$518.50 and was/will be paid by Mr. Richard
19 Wetzel.

20 MY OFFICIAL HAND this the 3rd day of
21 December, 2010.

22
23
24
25

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